



Office of the City Clerk · 555 Santa Clara Street · Vallejo · CA · 94590 · 707.648.4527

February 15, 2019

Law Office of Sanjay S. Schmidt  
1388 Sutter Street, Suite 810  
San Francisco, CA 94109

Re: Claimant – Hutchins, Santiago

Dear Sir/Madam:

Your claim was received in the City Clerk's office on 2/14/2019 and has been referred to our City Attorney's office for examination and appropriate action.

Pursuant to the California Government Code, the City of Vallejo may act on your claim within the following time limits:

- ☐ *Forty-five (45) days upon receipt if personally delivered*
- ☒ *Fifty (50) days upon mailed receipt if the claimant's address is within the State of California*
- ☐ *Fifty-five (55) days upon mailed receipt if the claimant's address is in the United States*
- ☐ *Sixty-five (65) days upon mailed receipt if the claimant's address is outside the United States*

If no action has been taken within the time noted above, the claim is deemed automatically rejected.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dawn G. Abrahamson", is written over the printed name.

DAWN G. ABRAHAMSON  
City Clerk

Enclosure

cc: City Attorney (via e-mail)  
City Clerk  
York (via e-mail)



TEL (415) 563 8583  
FAX (415) 223 9717

1388 SUTTER STREET, SUITE 810  
SAN FRANCISCO, CA 94109

RECEIVED  
2019 FEB 14 PM 3:08  
CITY OF THE  
CITY CLERK  
CITY OF VALLEJO

February 8, 2019

**RE: GOVERNMENT CODE § 910 CLAIM AGAINST THE CITY OF VALLEJO,  
the CITY OF WALNUT CREEK, and the CITY AND COUNTY OF SAN  
FRANCISCO  
(Gov. Code, § 910 et seq.)  
& SUPPLEMENTAL DEMAND FOR PRESERVATION OF EVIDENCE**

*Via Facsimile, Email, and Personal Service*

**Dawn G. Abrahamson**  
City Clerk for the City of Vallejo  
555 Santa Clara Street, 3<sup>rd</sup> Floor  
Vallejo, CA 94590  
T: (707) 648-4527  
F: (707) 648-4535  
E: [dabrahamson@ci.vallejo.ca.us](mailto:dabrahamson@ci.vallejo.ca.us)

*Via Facsimile & US Mail*

**Suzie Martinez**  
City Clerk for the City of Walnut Creek  
1666 North Main Street, 3<sup>rd</sup> Floor  
Walnut Creek, CA 94596  
T: (925) 943-5818  
F: (925) 943-5897

*Via Facsimile & US Mail*

**Clerk for the City and County of San Francisco**  
City Hall, Room 168  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4678  
T: (415) 554-4950

To Whom It May Concern:

Notice is hereby given of a Government Code § 910 claim by Mr. **Santiago Hutchins** (hereafter "Mr. Hutchins" or "Claimant"), **2224 Hillsborough Ct., Concord, CA 94520**, against the City of Vallejo, the City of Walnut Creek, and the City and County of San Francisco.

**ADDRESS WHERE CORRESPONDENCE SHOULD BE SENT:** Notices pertaining to this claim are to be sent to the **Law Office of Sanjay S. Schmidt, 1388 Sutter Street, Suite 810, San Francisco, CA 94109.**

**CIRCUMSTANCES GIVING RISE TO CLAIM:** The date, place, and other circumstances giving rise to this claim are as follows:

1. On or about August 11, 2018, in the area of Rocco's Pizzeria, in Walnut Creek, CA, after exercising his rights to free speech in an encounter with City of Vallejo Police Officer David McLaughlin (#664) ("Ofc. McLaughlin"), who was not on-duty at the time, Claimant was subjected to excessive force at the hands Ofc. McLaughlin, who needlessly and unlawfully brandished his gun and pointed it at Mr. Hutchins; Vallejo Police Department Officer David McLaughlin drew his firearm and, using the apparent authority granted to him by law as a police officer, held Mr. Hutchins at gunpoint. This occurred outside of Rocco's Ristorante Pizzeria, located at 2909 Ygnacio Valley Road, in Walnut Creek, CA.
2. Subsequently, Ofc. McLaughlin and a to-be-identified, off-duty City and County of San Francisco Sheriff's Department Sergeant violently took Mr. Hutchins down to the ground, and then while Mr. Hutchins was on the ground, Ofc. McLaughlin used unreasonable and excessive force upon Mr. Hutchins, intentionally striking him in the head and causing him to suffer serious injuries. This was done with the acquiescence of the to-be-identified, off-duty City and County of San Francisco Sheriff's Department Sergeant, as well as certain, to-be-identified City of Walnut Creek police officers. Ofc. McLaughlin's conduct was motivated, at least in part, by the words used by Mr. Hutchins used towards him, which he inferably interpreted as disrespectful, prompting him to retaliate by using excessive force and abusing his authority.
3. To-be-identified City of Walnut Creek Police Officers arrived, and were in a position to stop Ofc. McLaughlin from using excessive force on Mr. Hutchins, or could have intervened, but failed to do so.
4. Further, neither the to-be-identified City of Walnut Creek Police Officers, nor the off-duty City and County of San Francisco Sheriff's Sergeant took any action in their capacity as peace officers to address law violations by Ofc. McLaughlin.
5. As noted, the to-be-identified, off-duty City and County of San Francisco Sheriff's Sergeant participated in the unlawful take-down of Mr. Hutchins and, likewise, acquiesced in the use of excessive force on the person of Mr. Hutchins. This individual was in a position to stop Ofc. McLaughlin from using excessive force on Mr. Hutchins, or could have intervened, but failed to do so.

6. Exerting his authority as a police officer, McLaughlin then caused Mr. Hutchins to be arrested by the Walnut Creek Police Department.
7. Claimant was arrested.
8. With respect to any violations committed by one officer, where another was close enough and had sufficient time to stop the violations, but failed to do so, they failed to intervene and are liable for both their own violations and as integral participants of one another's violations.
9. With respect to any supervisors that failed to properly supervise any officer or ratified the wrongful conduct of any officer, they are liable individually and in their supervisory capacity.
10. **This claim could give rise to state law causes of action under the following principles/legal theories:**
  - i. The "Bane Act" – Civil Code Section 52.1 (b), including, but not limited to, constitutional violations based on:
    1. False Arrest (based on the 4th Amendment, Art. I, § 13, and under state common law);
    2. First Amendment – Freedom of Speech violations;
    3. Excessive force (based on the 4th Amendment, Art. I, § 13, and under state common law); and,
    4. Violations of his rights under Civil Code section 43.
  - ii. Excessive Force;
  - iii. Assault and Battery;
  - iv. Negligence;
  - v. Negligent Hiring/Supervision;
  - vi. Intentional Infliction of Emotional Distress;
  - vii. False Imprisonment and False Arrest;
  - viii. Violations of the California Constitution, including, but not limited to Article I, § 13;
  - ix. Civil Code §§ 51, 51.7, 52.1, 52, 54, and 54.1 et seq.; and,
  - x. Any and all other causes of action reasonably inferable from the facts and circumstances of the case, the age or condition of the Claimant, or any other facts, as reflected in the documents and records on file at present or from other facts subsequently discovered.
11. **This claim could give rise to federal law causes of action under the following principles/legal theories:**
  - i. 42 U.S.C. §§ 1983 and 1988, including, but not limited to, claims based on the First Amendment, Fourth Amendment, Fourteenth Amendment, and *Monell v. Dep't. of Social Services*; and,
  - ii. Any and all other causes of action reasonably inferable from the facts and circumstances of the case, the age or condition of the Claimant, or any other facts, as reflected in the documents

and records on file at present or from other facts subsequently discovered.

**12. GENERAL DESCRIPTION OF DAMAGES:** A general description of the damages, as far as they are known at the time this claim is being presented, includes, but is not limited to, the following:

- a. Physical injuries;
- b. Monetary damages;
- c. Medical Expenses (Past & Future);
- d. Any and all other Special Damages;
- e. Deprivation of Liberty;
- f. Violation of his State and Federal Constitutional, Statutory, or Common Law Rights;
- g. Pain and Suffering;
- h. Fear, Worry, Anxiety, Embarrassment, Humiliation, Inconvenience, Loss of Enjoyment of Life, and other Special and/or General Damages that may be disclosed in discovery and/or proven or uncovered later;
- i. Emotional distress and all related general damages;
- j. All Statutory Penalties, Attorney's Fees, and Costs, including, but not limited to, those provided by the Bane Act;
- k. Punitive Damages;
- l. Mr. Hutchins may also seek an award of the reasonable value of attorneys' fees incurred in pursuing the matter, pursuant to, inter alia, 42 United States Code Section 1988, California Civil Code Sections 52 and 52.1, Code of Civil Procedure Section 1021.5, and any other applicable authority;
- m. Although not required by this claim, Mr. Hutchins also reserves the right to seek equitable relief in any suit filed based on this claim, including but not limited to injunctive relief and/or declaratory relief.

**13. NAMES OF PUBLIC EMPLOYEES CAUSING INJURY, IF KNOWN:**

Claimant has not had the benefit of a complete investigation into this matter, nor has he been able to conduct any formal discovery regarding the facts and circumstances of the incident. He, therefore, reserves the right to identify individuals whose involvement has not yet been ascertained. Nonetheless, the following persons may have been responsible in some manner for Claimant's harms and losses, based on the limited information available thus far. At the time this claim is being presented, the names of the public employees whose tortious and constitutionally violative conduct did or may have given rise to this claim include, but may not be limited to,<sup>1</sup> the following:

- a. City of Vallejo Officer David McLaughlin (Badge #664)

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<sup>1</sup> The City of Vallejo, the City of Walnut Creek, and the City and County of San Francisco will be presumed to be on constructive notice of this claim as it relates to any employees not expressly listed herein, since these municipalities have direct access to and control over the relevant documentation concerning or relating to the incident underlying this claim. These entities, thus, already have constructive and actual knowledge of the identities of the responsible employees. Further, these entities have presumably (or should have) conducted an internal affairs investigation concerning this incident, which should have also revealed the identities of potentially responsible parties.

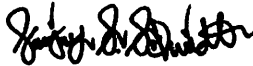
- b. City of Walnut Creek Police Officers, including, but not limited to, A. Ha (# P599) and other, to-be-identified officers;
- c. A to-be-identified City and County of San Francisco Sheriff's Sergeant; and,
- d. Any others.

**14. This claim would not be a limited civil case, based on the amount claimed.**

If you require clarification or supplemental information regarding the foregoing claim information in order to process, file, and otherwise fully consider this claim, please provide notification by U.S. Mail or telephone to the address and/or phone number above, at your earliest opportunity. It will be assumed that no additional information is needed, if no such notification is provided. Thank you for your time and attention to this matter.

Sincerely,

**LAW OFFICE OF SANJAY S. SCHMIDT**



Sanjay S. Schmidt

## **SUPPLEMENTAL DEMAND FOR PRESERVATION OF EVIDENCE**

An Evidence Preservation Demand was already served on the CITY OF VALLEJO and CITY OF WALNUT CREEK. Please take notice that we are hereby again demanding that you, as well as the CITY AND COUNTY OF SAN FRANCISCO, your CITY, your police departments, and all public employees preserve, in their original format, all documents, tangible things, and electronically stored information concerning or relating in any way to the incident that occurred on or about August 11, 2018 (which is believed to be logged in the Walnut Creek Police Department Records as Incident # 18-26344, but for which other Incident #s or calls may be logged), which involved one David McLaughlin (a police officer employed by the City of Vallejo Police Department), as well as Walnut Creek Police Officers, who came into contact with Santiago Hutchins in Walnut Creek, outside of Rocco's Ristorante Pizzeria, located at 2909 Ygnacio Valley Road, which involved the use of force on Mr. Hutchins, and which culminated in the arrest of Santiago Hutchins (hereafter "the incident") be **PRESERVED**. The term "incident," "Incident," "INCIDENT," or any other variation, as used herein, refers to the use of force, detention, arrest, citation, and booking, of Santiago Hutchins, on or about 08.11.18. **All evidence concerning or relating to this incident must be preserved**, including all REPORTS, MVARs or body worn camera footage, in Car Camera footage, any other video footage from any source, Dispatch Recordings, other Recordings, Dispatch Logs, CAD Logs, Pictures, Notes, or other documentation.

This letter is intended to preserve his rights and to preserve any evidence that relates in any way to the incident, and its cause. Please be advised that California law imposes a duty of preservation of relevant or discoverable evidence. *See Cedars-Sinai v. Superior Court* (1998), 18 Cal.4th 1. Under California law you, your employees, and all affiliated organizations must take all reasonable steps to preserve information and evidence pertaining to this incident, and are subject to sanctions for failing to do so. *See Williams v. Russ* (2008) 167 Cal.App.4th 1215; *Willard v. Caterpillar* (1995) 40 Cal.App.4th 892. You are hereby notified that failure to take the necessary steps to preserve evidence, including video, may result in serious sanctions or penalties.

In addition to the standard categories of evidence referenced below, demand is hereby specifically made that the following evidence concerning the above-referenced incident, or any other such incidents, be **preserved**, and that the evidence **not be disturbed** in any fashion:

- **All reports, MVARs or body cam footage, In Car Camera ("dash camera") footage, other video footage (from any source), Dispatch Recordings, Dispatch Logs, CAD Logs, Pictures, and all other documents or records concerning the incident;**
- **All surveillance footage from before, during, and after the incident, including at the Walnut Creek police station or any other facility whose surveillance cameras are under your custody or control, irrespective of whether you believe the cameras captured the actual incident or anything relevant or not;**
  - With respect to video, this video is probably stored on a hard drive. Please

stop all recording on this hard drive. Please download all data and video and preserve it. Even if you believe the video has been erased, you might be mistaken. Forensic experts are able to retrieve "erased" data. The more times the video is recorded over, the more difficult it is to retrieve. Therefore, if a video of the event cannot be viewed, please isolate this hard drive and do not record anything on it. We can coordinate an inspection protocol as soon as you wish. Until then, please keep the evidence in its current state.

Please preserve any photographs, videos, notes, physical evidence, reports, electronically stored information, or other materials, records, or documents directly or indirectly pertaining to this incident.

Please take notice that we are also hereby demanding that you **preserve**, in their original format, all documents, tangible things, and electronically stored information ("ESI") concerning or in any way relating to the subject incident referenced above. Your obligation to preserve this evidence is an ongoing one.

This Demand for Preservation of Evidence encompasses all record storage systems (both hard-copy and electronic), and both personal and business communication devices, including, but not limited to, cell phones, Personal Data Assistants ("PDAs"), and other devices, as well as public and private email accounts and communication, text messages, and any other mediums of communication or data.

Special steps must be taken to preserve this evidence. You are obligated to make any necessary changes to your retention strategies to preserve all relevant information. In this case, we are requesting that you immediately save all digital, analog, and paper evidence, as well as any video images and all other digital or analog files, whether by downloading them, burning them to disc, or employing some other method that is available to you, and we are demanding that you not allow the video from that date to be overwritten in the normal course of business. *See Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 218 (S.D.N.Y.2003).

**All Electronically Stored Information ("ESI") includes, but is not limited to:**

- Digital communications (e.g., e-mail, voice mail, instant messaging)
- Word processed documents (e.g., Word or WordPerfect documents and drafts)
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data files);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOV files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook PST, Yahoo, blog tools);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations)
- Network Access and Server Activity Logs;



- Project Management Application Data;
- Computer Aided Design/Drawing Files; and,
- Back Up and Archival Files (e.g., Zip, .tar)

Special steps must be taken to secure and preserve all ESI because of the dynamic nature of ESI. The ESI requested to be preserved is for all custodians, including, but not limited to, the servers of the different departments within your company, as well as their phones, laptops, desktops, hard drives and any other storage media, and any other employees of any other subcontractors not listed that have relevant ESI.

ESI is considered “electronic” if it exists in a medium that can only be read by a computer or other electronic device, including email, web pages, word processing files, audio and video files, images, computer databases, spreadsheets, emails, texts, inter-office communications, intra-office communications, Skype communications, and virtually anything else that is stored on a computing device. Media containing ESI includes, but is not limited to, servers, desktops, laptops, cell phones, hard drives, flash drives, PDAs and MP3 players. The media that is used to store this information includes cache memory, magnetic disks (such as computer hard drives or disks), optical disks (such as DVDs or CDs), magnetic tapes and flash memory (such as “thumb” or “flash drives”), Cloud accounts, Dropbox accounts, servers, as well as social media accounts. **ESI also includes a file’s metadata (electronically stored information about the characteristics of the data), which can include information about the file’s origin or validity.**

ESI resides not only in areas of electronic, magnetic, and optical storage media reasonably accessible to you and/or your company, but also in areas you and/or your company may deem not reasonably accessible. You and/or your company are obliged to preserve potentially relevant evidence from both these sources of ESI, even if you and/or your company do not anticipate producing such ESI in any related litigation.

**PLEASE TAKE NOTICE THAT THIS DEMAND COVERS PRESERVATION OF INFORMATION IN ALL MEDIUMS AND FORMATS; THUS, IF A DOCUMENT EXISTS AS A HARD-PAPER COPY, BUT ALSO EXISTS IN ELECTRONIC FORMAT, *THIS DEMAND REQUIRES PRESERVATION OF BOTH VERSIONS.***

The demand that you preserve both accessible and inaccessible ESI is reasonable and necessary. Pursuant to applicable rules of civil procedure, you must identify all sources of ESI you decline to produce in any related litigation and demonstrate to the court why such sources are not reasonably accessible. For good cause shown, the court may then order production of the ESI, even if it finds that it is not reasonably accessible. Accordingly, even ESI that you deem reasonably inaccessible **MUST** be preserved in the interim so as not to deprive our client of their right to secure the evidence or the Court of its opportunity to adjudicate the issue.

**This Demand to Preserve Evidence cannot be ignored.** Our client may suffer adverse consequences if this Demand to Preserve Evidence is ignored. **Destruction of**

evidence “*in anticipation of a discovery request*” exposes the destroying party to a wide range of sanctions.

The law imposes a duty to preserve evidence before litigation begins or before a discovery request. This duty **requires** a litigant to preserve what it knows, or reasonably should know, will be critical evidence in a pending action or one in the offing. *See Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 69 F.3d 337, 348 (9th Cir. 1995); *Leon v. IDX Systems Corp.*, 464 F.3d 951, 958 (9th Cir. 2006); *Wm. T. Thompson Co. v. General Nutrition Corp.*, 593 F.Supp. 1443, 1156 (C.D. Cal. 1984).

**Also, if you believe another department, company, agency, or entity has custody, control, or possession of any documents, recordings, or ESI that is explicitly or implicitly referenced above, we hereby demand you notify them of this request and that you take reasonable steps to secure such documents, recordings, or ESI.**

**Demand is hereby made to preserve all evidence and records related to the equipment involved in the incident, past and present, as well as this INCIDENT and any investigation of this incident, including, but not limited to:**

- **All “writings”;<sup>2</sup>**
- **Recordings;**
- **Videos;**
- **DVDs;**
- **Dispatch Recordings;**
- **Dispatch Logs;**
- **Photographs;**
- **Physical evidence;**
- **Incident Reports;**
- **Installation, Maintenance and/or Repair Records;**
- **Physical property;**
- **All investigation records, including emails, text messages, correspondence, printouts;**
- **All electronically stored information, electronic documents, statements, notes, correspondence, and memoranda;**
- **ALL RECORDS OF Communications, including, but not limited to:**
  - **Incoming and outgoing telephone calls**
  - **Radio communications**
  - **Texts and/or emails to and/or from any and all employees concerning or in any way relating to the INCIDENT;**
  - **Texts and/or emails to and/or from or to any employees who texted and/or emailed those employees concerning or in any way relating to the INCIDENT;**

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<sup>2</sup> The term “Writings” used herein is to have the broadest possible definition as set forth in California Evidence Code § 250 and Rule 1001 of the Federal Rules of Evidence.

- **All things related to or concerning in any way the INCIDENT referenced above; and,**
- **Any other Photographs and/or video, including, but not limited to:**
  - Digital photographs and/or video whether it be on cell phones or with officially (or non-officially) or privately owned video or digital cameras;.

Often, this evidence can be overwritten if special steps are not taken to preserve it. You are obligated to make any necessary changes to your retention strategies to preserve all relevant information. In this case, we are requesting that you immediately save the video images and all other digital or analog files, whether by downloading them, or burning them to disc or some other method that is available to you and are demanding that you not allow the video from that date to be overwritten in the normal course of business. *See Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 218 (S.D.N.Y.2003).

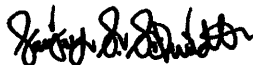
Please confirm, in writing, the existence of any evidence pertaining to the incident, provide a written description of that evidence, and acknowledge, in writing, your duty to preserve that evidence. If you fail to acknowledge this request in writing and set forth the description of evidence that will be preserved, we will presume any and all evidence described directly or inferentially in the paragraphs above will be preserved in accordance with this letter, and we will rely on that presumption.

If you have any questions about the recordings, documents or items at issue, please contact attorney Sanjay S. Schmidt (address and telephone number listed above) before destroying any tapes, recordings, documents, evidence, writings or items that have been requested or that may relate to this incident directly or indirectly.

Please contact our office if you have any questions or require clarification. We greatly appreciate your attention to this matter.

Sincerely,

**LAW OFFICE OF SANJAY S. SCHMIDT**



Sanjay S. Schmidt

1  
2  
3 **PROOF OF SERVICE**

4 The undersigned declares:

5 I am a citizen of the United States and employed in the County of Vallejo. I am over the  
6 age of 18 and am not a party to the within above-entitled action; my business address 1388 Sutter  
7 Street, Suite 810, San Francisco, CA 94109

8 On the date below, I served:

9 **GOVERNMENT CODE § 910 CLAIM AGAINST THE CITY OF VALLEJO,  
10 the CITY OF WALNUT CREEK, and the CITY AND COUNTY OF SAN  
11 FRANCISCO**

12 (Gov. Code, § 910 et seq.)

13 **& SUPPLEMENTAL DEMAND FOR PRESERVATION OF EVIDENCE**

14 On all parties in said action by serving a true copy as follows:

15 Dawn G. Abrahamson  
16 City Clerk for the City of Vallejo  
17 555 Santa Clara Street, 3rd Floor  
18 Vallejo, CA 94590  
19 T: (707) 648-4527  
20 F: (707) 648-4535  
21 E: dabrahamson@ci.vallejo.ca.us

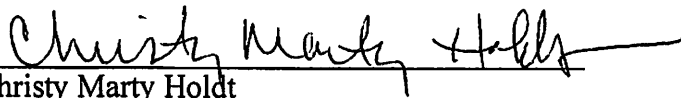
22   X   REGULAR MAIL - by placing a copy thereof, enclosed in a sealed envelope, with  
23 postage thereon, fully prepaid to be placed in the United States Mail at Livermore, California. I  
24 am readily familiar with the office's practice for collection and processing of correspondence for  
25 mailing, and pursuant to those practices the envelope would be deposited in the United States  
26 Postal Service the same day.

27        PERSONAL SERVICE – I caused to sealed envelope to be hand delivered to the parties  
28 herein at the addresses set forth above.

29   X   BY FACSIMILE – I sent such documents by way of facsimile to the offices of the  
30 addressee as set forth above. The telephone number of the sending facsimile machine was 415-  
31 223-9717.

32   X   BY EMAIL - I electronically served the above listed documents (exact titles).

33 I declared under penalty of perjury that the foregoing is true and correct. This declaration  
34 is executed this 8<sup>th</sup> day of February 2018, at San Francisco, California.

35   
36 Christy Marty Holdt



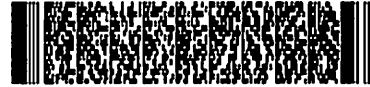
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1

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FROM 94109

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Sanjay S. Schmidt  
LAW OFFICE OF SANJAY S. SCHMIDT  
1388 Sutter Street  
Suite 810  
San Francisco CA 94109

C002

**SHIP TO:** Dawn G. Abrahamson  
City Clerk for the City of Vallejo  
555 Santa Clara Street Floor 3rd  
Vallejo CA 94590-5922



**RETURN RECEIPT  
REQUESTED**